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In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1017.

THE INTERLAKE STEAMSHIP COMPANY,
Petitioner,

v.

MARCELLA R. NIELSEN and STEPHEN O'HEARNE,
Deputy Commissioner,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

REPLY BRIEF OF PETITIONER
In Support of
Petition for Writ of Certiorari.

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Only by departing standards fashioned by unanimous decisions in this Court was it possible for the court below to hold this case covered by a statute that says it applies:

> "*only if* the disability or death results from an injury occurring upon the navigable waters," 33 U. S. C. 903 (a).

The Court of Appeals held this statute satisfied on the astonishing ground that nothing happened when the decedent:

> "drove his car off the end of the dock" (Appendix, p. 18),

for, as the Court of Appeals viewed it, the decedent, sailing through the air, was quite all right:

"until the impact on the frozen substance of the navigable waters at the end of the dock." (Appendix, p. 23.)

Although the accident originated on land, and had no maritime cause, the Court of Appeals still held it covered by the statutes.

This has not been the law.

And unless other circuits also decide to jettison the past it is not the standard that controls upon the waterways of the near or far coasts, or the Gulf. Only on the waterways of the Sixth Circuit is the new rule law.

The harm the decision below does—and the reason the case should have the attention of this Court—is that it plunges into uncertainty the provision confining the statute to injury occurring "upon the navigable waters" that for the nearly 40 years of the statute's life has had a clear, certain and easily applied meaning. More: it throws into doubt—by rejecting as outmoded—the cases by which this Court has marked the boundaries of admiralty jurisdiction.

The decision below thus reaches far beyond the Longshoremen's and Harbor Workers' Compensation Act here before the Court.

If the new rule the court below embraced reflects the modern-day view this Court should say so.

On the other hand, if it is not for courts below to predict overthrow of authority by this Court, the time to say so is now. Otherwise this Court's task of putting, or keeping, the law in tidy order will become well-nigh an impossible one.

These critical issues are not met, much less answered, by the Deputy Commissioner's pretense that the decision below "is in accord with the settled principles established by prior decisions of this Court" (page 7 of the Deputy

Commissioner's brief), when the rationale this Court has at least three times rejected has in this case been embraced by the court below. As the Court of Appeals put it: those cases are not in accord with the "trend * * * in the direction of expanding the boundaries of admiralty jurisdiction toward land." (Appendix, p. 23).

Nor are the critical issues this case presents answered, or met, by resort, by both the claimant (page 9 of the claimant's brief) and the Court of Appeals (Appendix, p. 23), to the Admiralty Extension Act, 46 U. S. C. 740, a statute that, if language has meaning, can have nothing to do with this case.

To use the Admiralty Extension Act as a prop for the decision below is to proclaim the dubious character of the decision and—worse—to shroud yet another important statute in a sea of murk.

The rule that is to govern this important area should not be left uncertain. Nor should law of the east and west coasts, and the Gulf, cease to be law on waterways ruled by the Sixth Circuit.

The petition for the writ of certiorari surely should be granted.

Respectfully submitted,

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